

§81.47

24 CFR Subtitle A (4-1-03 Edition)

(c)(1) of this section, the Secretary shall determine the remedial action(s) that the GSE is to be directed to take for such violation.

(3) In determining the appropriate remedial action(s), the Secretary shall solicit and fully consider the views of the Federal financial regulator responsible for the subject lender concerning the action(s) that are contemplated to be directed against such lender, prior to directing any such action(s). If such responsible Federal financial regulator makes a written determination that a particular remedial action would threaten the financial safety and soundness of a Federally-insured lender, the Secretary shall consider other remedial actions. Where warranted, the Secretary also shall solicit and fully consider the views of the Director regarding the effect of the action(s) that are contemplated on the safety and soundness of the GSE. In determining what action(s) to direct, the Secretary will also, without limitation, consider the following:

- (i) The gravity of the violation;
- (ii) The extent to which other action has been taken against the lender for discriminatory activities;
- (iii) Whether the lender's actions demonstrate a discriminatory pattern or practice or an individual instance of discrimination;
- (iv) The impact or seriousness of the harm;
- (v) The number of people affected by the discriminatory act(s);
- (vi) Whether the lender operates an effective program of self assessment and correction;
- (vii) The extent of any actions or programs by the lender designed to compensate victims and prevent future fair lending violations;
- (viii) The extent that a finding of liability against a lender is based on a lender's use of a facially-neutral underwriting guideline of a secondary mortgage market entity applied appropriately by the lender in order to sell loans to that secondary mortgage market entity; and
- (ix) Any other information deemed relevant by the Secretary.

(d) *Notice of remedial action(s).* (1) Following the Secretary's decision concerning the appropriate remedial ac-

tion(s) that the GSE is to be directed to take, the Secretary shall prepare and issue to the GSE and the lender a written notice setting forth the remedial action(s) to be taken and the date such remedial action(s) are to commence. The Notice shall inform the lender of its right to request a hearing on the appropriateness of the proposed remedial action(s), within 20 days of service of the Notice, by filing a request with the Docket Clerk, HUD Office of Administrative Law Judges.

(2) Where a lender does not timely request a hearing on a remedial action, the GSE shall take the action in accordance with the Notice.

(e) *Review and decision on remedial action(s).* (1) Where a lender timely requests a hearing on a remedial action, a hearing shall be conducted before a HUD administrative law judge (ALJ) and a final decision rendered in accordance with the procedures set forth in 24 CFR part 26, subpart B, to the extent such provisions are not inconsistent with subpart C of this part or FHEFSSA. The lender and the Secretary, but not the GSE, shall be parties to the action. At such hearing, the appropriateness of the remedial action for the violation(s) will be the sole matter for review. The validity or appropriateness of the underlying determination on the violation(s) shall not be subject to review at such hearing.

(2) The Secretary shall transmit to the GSEs each final decision by HUD on a remedial action and any dispositive settlement of a proceeding on such action.

(3) The GSE shall take the action(s) set forth in a final decision by HUD on remedial action(s) or any dispositive settlement of such a proceeding setting forth remedial action(s) in accordance with such decision or settlement.

[60 FR 61888, Dec. 1, 1995, as amended by 61 FR 50218, Sept. 24, 1996]

§81.47 Violations of provisions by the GSEs.

(a) FHEFSSA empowers the Director of OFHEO to initiate enforcement actions for GSE violations of the provisions of section 1325 of FHEFSSA and these regulations. The Secretary shall

refer violations and potential violations of 12 U.S.C. 4545 and this subpart C to the Director.

(b) Where a private complainant or the Secretary is also proceeding against a GSE under the Fair Housing Act, the Assistant Secretary for Fair Housing and Equal Opportunity shall conduct the investigation of the complaint and make the reasonable cause/no reasonable cause determination required by section 810(g) of the Fair Housing Act. Where reasonable cause is found, a charge shall be issued and the matter will proceed to enforcement pursuant to sections 812(b) and (c) of the Fair Housing Act.

Subpart D—New Program Approval

§ 81.51 General.

This subpart details the requirements and procedures for review of requests for new program approval by the Secretary.

§ 81.52 Requirement for program requests.

(a) Before implementing a new program, a GSE shall submit a request for new program approval (“program request”) to the Secretary for the Secretary’s review. Submission of a program request is not required where the program that the GSE proposes to implement is not significantly different from:

(1) A program that has already been approved in writing by the Secretary; or

(2) A program that was engaged in by the GSE prior to October 28, 1992.

(b) If a GSE does not submit a program request for a program, the Secretary may request information about the program and require that the GSE submit a program request. The GSE shall comply with the request and may indicate in such response its views respecting whether the program is subject to the Secretary’s review.

§ 81.53 Processing of program requests.

(a) Each program request submitted to the Secretary by a GSE shall be in writing and shall be submitted to the Secretary and the Director, Office of

Government-Sponsored Enterprises, Department of Housing and Urban Development, Washington, DC. For those requests submitted before 1 year after the effective date of the regulations issued by the Director of OFHEO under 12 U.S.C. 4611(e), the GSE shall simultaneously submit the program request to the Director.

(b) Each program request shall include:

(1) An opinion from counsel stating the statutory authority for the new program (Freddie Mac Act section 305(a) (1), (4), or (5), or Fannie Mae Charter Act section 302(b)(2)–(5) or 304);

(2) A good-faith estimate of the anticipated dollar volume of the program over the short- and long-term;

(3) A full description of: (i) The purpose and operation of the proposed program;

(ii) The market targeted by the program;

(iii) The delivery system for the program;

(iv) The effect of the program on the mortgage market; and

(v) Material relevant to the public interest.

(c) Following receipt of a program request, the Secretary and, where a program request is submitted to the Director pursuant to paragraph (a) of this section, the Director shall review the program request.

(d) *Transition standard for approval.* Program requests submitted by the GSEs before the date occurring 1 year after the effective date of the regulations issued by the Director under 12 U.S.C. 4611(e) shall be approved or disapproved by the Secretary as provided in 12 U.S.C. 4542(b)(2).

(e) *Permanent standard for approval by the Secretary.* Program requests submitted after the date occurring one year after the effective date of the regulations issued by the Director under 12 U.S.C. 4611(e) establishing the risk-based capital test shall be approved by the Secretary in accordance with 12 U.S.C. 4542(b)(1).

(f) *Time for review.* Unless the Secretary and, where appropriate, the Director of OFHEO, need additional information, a program request shall be approved or disapproved within 45 days